

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRUSTEES OF THE NORTHWEST
IRONWORKERS RETIREMENT TRUST; *et*
al.,

Plaintiffs,

v.

U-STEEL INCORPORATED; DYNAMIC
INTERNATIONAL AK, INC.; GENE LETTS;
JACKIE LETTS; BERSCHAUER/PHILLIPS
CONSTRUCTION CO.; SFECO
INSURANCE COMPANY OF AMERICA and
CITY OF VANCOUVER, WASHINGTON,

Defendants.

Case No. C05-5698FDB

ORDER GRANTING CERTAIN
DEFENDANTS' MOTION TO
DECLINE THE EXERCISE OF
SUPPLEMENTAL JURISDICTION
AND DISMISS WITHOUT
PREJUDICE

INTRODUCTION

Defendants Berschauer/Phillips Construction Co. And Safeco Insurance Company of America, joined by Defendant City of Vancouver, move that the Court exercise its discretion under 28 U.S.C. § 1367 to decline the exercise of supplemental jurisdiction over Plaintiffs' (the "Trusts") claims against Berschauer/Phillips, the payment bond, and the retainage fund and to dismiss these claims without prejudice.

This cause of action grows out of the circumstances where the City of Vancouver hired

1 Berschauer/Phillips Construction Company to act as the general contractor on the Firstenburg
2 Community Center Project. Berschauer/Phillips posted a payment bond for the project, which was
3 issued by Safeco Insurance Company of America.. Berschauer/Phillips executed a purchase order
4 and a subcontract agreement with Defendant Dynamic International, Inc., which was interconnected
5 with Defendant U-Steel. U-Steel was party to a collective bargaining agreement that required it to
6 make certain contributions to the Trusts for each hour that a U-Steel employee worked on the
7 project. Berschauer/Phillips states that it was not a party to nor was it obligated by the collective
8 bargaining agreement.

9 Problems arose with the structural steel during the construction project, and
10 Berschauer/Phillips received a notice of claim by the Trusts, which were attempting to recover from
11 the payment bond and/or retainage fund delinquent payments that the Trusts allege U-Steel and/or
12 Dynamic International owed under the collective bargaining agreement.

13 Berschauer/Phillips responded to the Trusts' notice of claim against the payment bond and/or
14 retainage fund by filing a lawsuit in Clark County Superior Court on January 31, 2006 against the
15 Trusts and the Bricklayers and Allied Craftworkers (the "Bricklayers"). The Bricklayers had
16 provided Berschauer/Phillips with a notice of claim against the payment bond and/or retainage fund for
17 delinquent payments that another subcontractor allegedly owes under a separate collective bargaining
18 agreement.

19 In the Clark County Superior Court action, Berschauer/Phillips' Complaint asks the Court for
20 declaratory relief that all defendants are prohibited from recovering on their claims against the
21 payment bond and/or retainage fund.

22 On February 15, 2006, following Berschauer/Phillips' filing of its lawsuit in Clark County
23 Superior Court on January 31, 2006, the Trusts filed their first amended complaint in this federal
24 lawsuit asserting claims against Berschauer/Phillips and/or the payment bond issued by Safeco and/or
25 the retainage fund being withheld by the City of Vancouver.

DISCUSSION

Berschauer/Phillips argues that the claims contained in the Amended Complaint in this federal lawsuit are the same as those pending in the Clark County Superior Court prior to the Amended Complaint in this cause of action being filed. While “district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy,” (28 U.S.C. § 1367(a)) nevertheless, district courts may decline to exercise supplemental jurisdiction over a claim in four instances, the fourth of which, Berschauer/Phillips contends applies in this case: “in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” (28 U.S.C. § 1367(c)) Compelling reasons to decline the exercise of supplemental jurisdiction include “those that lead a court to conclude that declining jurisdiction best accommodates the values of economy, convenience, fairness, and comity.” *Executive Software North America, Inc. v. United States District Court for the Central Dist. Of California*, 24 F.3d 1545, 1557 (9th Cir. 1994). In *Polaris Pool Systems v. Letro Products, Inc.*, 161 F.R.D. 422, 425 (C.D. Cal. 1995), the Court concluded that it was appropriate to decline the exercise of supplemental jurisdiction over claims subject to a pending state lawsuit because it furthered the values of economy, convenience, fairness, and comity. Thus, Berschauer/Phillips argues that this Court should decline to exercise supplemental jurisdiction over the Trusts’ state law claims against Berschauer/Phillips because (1) the state lawsuit was commenced first, (2) the claims are state law claims, (3) the state litigation will be proceed regardless of whether this Court decides to exercise supplemental jurisdiction, and (4) it would be unfair to fracture the previously filed state action, which allows for all state law claims against the payment bond and retainage fund to be resolved in one action.

The Trusts respond arguing that the Court has supplemental jurisdiction, the claims being part of the same case or controversy, and the fourth exception, relied on by the moving defendants, is narrow and no exceptional circumstances are present. Any inquiry concerning the two actions


1 should focus on how far advanced the federal litigation is compared to the state litigation. The mere
2 fact that state law is involved doesn't create "exceptional circumstances." In any event, at least one
3 party will have to litigate in more than one court, and that party should be the movants, according to
4 the Trusts, because they have not diligently pursued their claim in state court.

5 This Court will decline to exercise supplemental jurisdiction over the state law claims against
6 Berschauer/Phillips, the payment bond, and the retainage fund and will dismiss these claims without
7 prejudice. Berschauer/Phillips commenced its lawsuit in Clark County Superior Court prior to the
8 Trusts amending their claims to assert the claims against Berschauer/Phillips. It serves the interests
9 of fairness, economy, convenience, and comity to decline to exercise supplemental jurisdiction over
10 the claims against Berschauer/Phillips Construction Company, Safeco Insurance Company of
11 America and the City of Vancouver, as set forth in the fifth and sixth claims for relief in Plaintiffs'
12 First Amended Complaint in order that they may be litigated in the state court.

13 ACCORDINGLY, IT IS ORDERED:

- 14 1. Berschauer/Phillips Construction Company's Motion To Decline The Exercise of
15 Supplemental Jurisdiction and Dismiss Without Prejudice [Dkt. # 30], joined in by
16 City of Vancouver [Dkt. # 34] is GRANTED;
- 17 2. Plaintiffs' claims against Berschauer/Phillips Construction Company, Safeco
18 Insurance Company of America and the City of Vancouver, as set forth in the fifth
19 and sixth claims for relief in Plaintiffs' First Amended Complaint are DISMISSED
20 without prejudice.

21 DATED this 21st day of July, 2006.

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23 FRANKLIN D. BURGESS
24 UNITED STATES DISTRICT JUDGE
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